

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:10CR147</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
<b>GEORGE E. BANISTER, JR.,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the Court on the Defendant's objections (Filing No. 20) to the Magistrate Judge's order (Filing No. 18) denying the Defendant's unopposed motion to file a motion to suppress out of time.

Under 28 U.S.C. § 636(b)(1)(A) and NECrimR 59.2, the Court has reviewed the order to which the Defendant objects. A district court may set aside any part of the magistrate judge's order, on a non-dispositive matter, shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A).

The pretrial motion deadline was May 24, 2010. On May 25, 2010, the Defendant filed an unopposed motion to file a motion to suppress out of time. The motion explained that the defense investigator contacted witnesses, one of whom returned the investigator's call on May 25, 2010. Defense counsel represents that the information supplied by the witness provided defense counsel reason to file a motion to suppress and requests leave to file the motion out of time.. The motion to continue is the first request for a continuance in this case, and is unopposed.

Judge Gossett denied the motion stating that "the defendant has not satisfactorily explained why the motion could not have been timely filed, and the defendant has not shown good cause for a continuance." (Filing No. 18.) While this Court appreciates the

need for enforcement of deadlines, and expects counsel to make every effort to comply with all applicable deadlines, the Court does view defense counsel's request as one that is supported by good cause and that should be granted in the interest of justice.

IT IS ORDERED:

1. The Defendant's objections to the Magistrate Judge's order (Filing No. 20) are granted;
2. The Magistrate Judge's order (Filing No. 18) denying the Defendant's motion to file pretrial motions out of time is overruled;
3. This matter will be removed from the June 29, 2010, trial list; and
4. The Court requests that the Clerk place the Defendant's motion to suppress (Filing No. 16) on Judge Gossett's pending motion list for his findings and recommendations.

DATED this 22<sup>nd</sup> day of June, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge